DEPARTMENT OF STATE REVENUE

04-20182500R.ODR

Final Order Denying Refund: 04-20182500R
Gross Retail Tax
For the Years 2014, 2015, 2016, and 2017

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

The Department was unable to agree with Medical Service Provider that it was entitled to a refund of sales tax paid on the cost of utilities consumed by Medical Service Provider because it was not the entity which entered into the retail transaction which acquired and paid for the utilities.

ISSUE

I. Gross Retail Tax - Tax Paid on the Purchase of Utilities.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1(a); IC § 6-2.5-2-1(b); IC § 6-2.5-4-1; IC § 6-2.5-5-5.1; IC § 6-2.5-5-21(b)(1)(D)(i); IC § 6-2.5-5-25; IC § 6-2.5-5-25(a); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); Sales Tax Information Bulletin 10 (April 2012).

Taxpayer argues that the Department erred in denying it a refund of gross retail tax paid on the purchase of utilities consumed at its medical care facility.

STATEMENT OF FACTS

Taxpayer is an Indiana not-for-profit 501(c)(3) medical care facility. Taxpayer provides long-term skilled nursing and rehabilitation therapy services at multiple Indiana locations.

Taxpayer hired Management Company to oversee Taxpayer's routine administrative functions including patient billing and managing the cash and billing functions for each of Taxpayer's facilities.

Management Company entered into an agreement with utility providers to bill Management Company for the cost of utilities consumed by Taxpayer. Management Company paid bills to water, hydrant, sewer, electric, and phone utility providers.

Management Company then hired a third-party, Financial Advisor, to "collect [Management Company's] invoices and remit payments on behalf of Taxpayer." According to Taxpayer, this third-party Advisor "is also responsible for reviewing the invoices for reasonable usage and negotiation on behalf of Taxpayer." Taxpayer states that Financial Advisor has been instrumental in identifying "utility leaks" and "has also eliminated the assessment late fees associated with late payments when [Taxpayer] was responsible for remitting their payments."

After reviewing the utility bills, Financial Advisor, twice each week provides Management Company a summary of any invoices to be paid. Management Company then reviews Financial Advisor's report and submits payments from its own bank account to the utility companies. Afterwards:

> [Financial Advisor] records the expense and related payable to the [Taxpayer's] books and records. The payable balance is settled by [Taxpayer] with daily cash sweeps that are applied against the [Taxpayer's] running total of expenses.

Management Company and Financial Advisor perform this single-payer function on behalf of Taxpayer and other, unrelated medical care facilities.

Management Company, on behalf of Taxpayer, then submitted to the Indiana Department of Revenue ("Department") a Form GA-110L, Claim for Refund, seeking a refund of approximately $19,000 in sales tax. The form names Taxpayer as the entity seeking the refund and explains that Taxpayer is an exempt, non-profit

organization entitled to purchase utilities without paying sales tax.

In a "Refund Denial" letter dated October 2018, the Department denied the refund citing to IC § 6-8.1-9-1(a) which provides in part:

> If a *person* has paid more tax than the person determines is legally due for a particular taxable period, the *person* may file a claim for a refund with the department.

(*Emphasis added*).

The Department's letter explained, "In this particular situation the individual that created the taxable event, the purchaser of the utilities, is not the person applying for the refund." In other words, the Department concluded that Taxpayer was not the "purchaser of the utilities" and was not entitled to claim the refund.

Taxpayer disagreed with the decision and submitted a protest to that effect. An administrative hearing was conducted during which Management Company's representative explained the basis for the protest. This Final Order Denying Refund results.

I. Gross Retail Tax - Tax Paid on the Purchase of Utilities.

DISCUSSION

The issue is whether Taxpayer, as the non-profit entity, is entitled to claim a refund of taxes purportedly paid on its behalf by Management Company.

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). Retail transactions involve the transfer of tangible personal property. IC § 6-2.5-1-2; IC § 6-2.5-4-1. A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). IC § 6-2.5-5-5.1 provides that "'tangible personal property' includes electrical energy, natural or artificial gas, water, steam, and steam heat." However, Indiana law also provides a number of specific sales tax exemption including IC § 6-2.5-5-25 on which Taxpayer relies.

Taxpayer states that the Department erred in denying it a refund and relies on IC § 6-2.5-5-25(a) as authority for its position. The cited statute provides:

> Transactions involving tangible personal property, accommodations, or service are exempt from the state gross retail tax, if the person acquiring the property, accommodations, or service:
> (1) is an organization described in section 21(b)(1) of this chapter;
> (2) primarily uses the property, accommodations, or service to carry on or to raise money to carry on its not-for-profit purpose; and
> (3) is not an organization operated predominantly for social purposes.

Taxpayer states that the exemption statute is "clear on its face" explaining that its "purchases of utility services meet the statutory requirements for the exemption." Taxpayer states that: (1) it was the party acquiring the utility services; (2) Taxpayer is a hospital described in IC § 6-2.5-5-21(b)(1)(D)(i); (3) Taxpayer uses the utility services to further its not-for-profit purpose of being a hospital and treating the infirm; and (4) Taxpayer is not an organization operated predominately for social purposes.

The Department does not disagree with Taxpayer's assertion that it is a qualified not-for-profit hospital and that it is presumably entitled to purchase utilities without paying sales tax. However the issue in this instance is whether it may or may not receive a refund of sales tax paid for by Management Company. Taxpayer's assertion is premised on the belief that its not-for-profit status "flows through" to its Management Company much as responsibility for paying the utility bills "flows through" from Financial Advisor to Management Company to Taxpayer. The Department is unable to agree. As explained in Sales Tax Information Bulletin 10 (April 2012), 20120530-IR-045120248NRA, "Application of Sales Tax to Nonprofit Organizations,"

> To qualify for a sales tax exemption on purchases as a nonprofit organization, the following conditions must be met:
>
> . . . .

> The article purchased must be used for the same purpose as that for which the organization is being exempted, and the *transaction must be invoiced directly to the nonprofit organization and paid directly via the organization's funds*.

(*Emphasis added*).

Taxpayer disagrees with the Bulletin believing that it "improperly adds language to the statute that limits the scope of the exemption by adding additional requirements." The Department points out that IC § 6-2.5-5-25(a) provides that, "Transactions involving tangible personal property, accommodations, or service are exempt from the state gross retail tax, if the *person* acquiring the property, accommodations, or service: (1) is an organization described in section 21(b)(1) of this chapter . . . ." In Taxpayer's case, the "person" acquiring the utilities is Management Company and Management Company is not an organization described in section 21(b)(1) of this chapter . . . ."

Further the Department's interpretation set out in the Bulletin is entitled to deference even over another reasonable, but otherwise contrasting interpretation. "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, interpretations of Indiana tax law contained in the Information Bulletin are entitled to deference over Taxpayer's argument that the Bulletin may improperly encroach upon and limit the statutory provision.

A statute which provides a tax exemption, such as IC § 6-2.5-5-25, is strictly construed against the taxpayer. *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id*. at 100-101. Given that standard, the Department is unable to expand upon the four corners of the statute which allows an exemption to that "person" which entered into a retail transaction to acquire tangible property.

FINDING

Taxpayer's protest is respectfully denied.

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